



UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

In the Matter of

Docket No. 08-43-SA

MASON ACADEMY OF COSMETOLOGY,

Federal Student Aid
Proceeding

Respondent.

Appearances: Eddie Noeman, Owner, for Mason Academy of Cosmetology.

Denise Morelli, Esq., Office of the General Counsel, United States Department of Education, Washington, D.C., for Federal Student Aid.

Before: Judge Ernest C. Canellos

DECISION

Mason Academy of Cosmetology (Academy) operated as a proprietary institution of higher education in Mason, Tennessee, offering programs in cosmetology. These programs were accredited by the National Accrediting Commission of Cosmetology Arts and Sciences and were eligible to participate in the Federal Pell Grant Program. The Pell Grant program is governed by Title IV of the Higher Education Act of 1965, as amended (Title IV). 20 U.S.C. § 1070 *et seq.* and 42 U.S.C. 2751 *et seq.* Within the U.S. Department of Education (ED), the office of Federal Student Aid (FSA) is the organization that administers these programs.

Pursuant to 34 C.F.R. § 668.23, an institution that participates in Title IV programs, must submit annually to the Secretary a compliance audit and audited financial statements no later than six months after the last day of the institution's fiscal year. Academy's annual audit report for the January 1 thru December 31, 2006, fiscal year was not received by FSA on or before due date of June 30, 2007. After a series of communications between FSA and Academy, an "audit report" for that time period was ultimately submitted on February 1, 2008. This report was reviewed by FSA and determined to be non-compliant with the regulatory requirements. Specifically, the report revealed that the auditor found that Academy could not provide a general ledger, financial statements, monthly bank reconciliations and student records. As a result, the auditor issued an adverse opinion regarding Academy's Title IV compliance. These findings

were concurred in by FSA. In a Final Audit Determination (FAD), issued on July 2, 2008, FSA demanded that \$17,282, all the Title IV funding for the 2006 fiscal year plus interest, be returned to ED. On August 20, 2008, Academy's counsel requested a hearing to challenge the findings of the FAD and, once assigned the case, I issued an order to commence the hearing process.

On October 27, 2008, I suspended the proceedings at the joint request of the parties to give Academy the opportunity to provide an acceptable audit for the 2006 fiscal year. Upon a notice from FSA that it appeared that Academy would, ultimately, be unable to comply with its audit responsibility, on January 4, 2010, I reinstated the briefing schedule, requiring Academy to submit its brief by February 5, 2010. When Academy failed to submit its brief as scheduled, FSA filed a Motion for Default Judgment on April 16, 2010. In response, I issued an Order to Show Cause, giving Academy until May 7, 2010 to purge its default. Academy did not respond. As a consequence of Academy's failure to comply with the time limits I have established and under the authority of 34 C.F.R § 668.117(a)(3), I am terminating the hearing process and am issuing this decision.

It is well established that in Subpart H -- audit and program review -- proceedings, the Respondent has the burden of proving by a preponderance of the evidence, that Title IV funds it received were lawfully disbursed. 34 C.F.R. §668.116(d). If a respondent institution fails to establish the correctness of its expenditure of federal education funds, it must return all such funds to ED. The record is clear -- Academy has not presented any evidence to rebut the findings in the FAD. In fact, after filing its appeal, it has provided absolutely no evidentiary matter to comply with its commitments in this case. It is, thusly, clearly in default. However, rather than merely issuing a "Default Judgment," I will decide this appeal on the merits. In summary, I am clearly convinced that the findings contained in the FAD sufficiently state allegations in a manner that demonstrate the existence of a *prima facie* showing that the institution failed to comply with Title IV program requirements. Consistent with the record before me, I find that Academy has failed to meet its burden of establishing that its expenditures of Title IV funds, as enumerated in the FAD, was correct. Therefore, Academy owes \$17,282 in Title IV liability.

ORDER

On the basis of the foregoing findings of fact and conclusions of law, it is **HEREBY ORDERED** that Mason Academy of Cosmetology, pay to the United States Department of Education the sum of **\$17,282.00**, in the manner as required by law.

Ernest C. Canellos
Chief Judge

Dated: May 13, 2010

SERVICE

A copy of the attached Initial Decision was sent by certified mail, return receipt requested, to the following:

Eddie Noeman, Owner
Elsie L. McBride, President
Mason Academy of Cosmetology
213 Highway 70
Mason, TN 38049

Denise Morelli, Esq.
Office of the General Counsel
U.S. Department of Education
400 Maryland Avenue, S.W., Room 6E120
Washington, D.C. 20202-2110